LIM PENG THIAN

v.

CREDIT CORP. (M) BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL RAZAK J
[CIVIL SUIT NO. C 123 OF 1984]
9 MARCH 1984

CONTRACT: *Sale of goods - Goods under hire purchase at time of sale - Whether plaintiff owner of goods - Whether plaintiff entitled to delivery - Sale of goods by person not owner - Whether sale by agent - Negligence of seller - Effect - Whether sale by mercantile agent - Whether in course of business - Whether buyer in good faith - Seizure of vehicle - Whether defendant had right.*

A hire-purchase agreement regarding a motor vehicle was entered into between one Leung and the defendant, which bought it from Champion Motors. The vehicle was registered in Leung's name with the defendant's endorsement on it claiming ownership. The endorsement however was a forgery. The vehicle was later found in the possession of the plaintiff and seized by the defendant. The plaintiff claiming that he had bought the vehicle from one Chong, a salesman at Champion Motors at that time, took out a summons-in-chambers to have the vehicle returned to him pending the hearing of a suit against the defendant, for a declaration that he was the owner and for delivery of the vehicle. The defendant applied to have the vehicle sold and the proceeds deposited pending the determination of the action. They also counter-claimed for a declaration that they were the legal owner and for consequential reliefs thereto. It was decided that for the convenient disposal of all the matters, the suit itself be heard.

Held:

[1] The defendant was the owner of the vehicle and Champion Motors and Chong were the defendant's agent for the specific purpose only of effecting the hire-purchase agreement between the defendant and Leung.

[2] Therefore the failure of Champion Motors to ensure that the registration card was endorsed did not prevent the defendant from resuming ownership. Chong, as the servant of Champion Motors, had no authority to act for the defendant, nor was it ever intended that he should have such authority.

[3] The negligence, if any, on the part of Champion Motors was not such conduct as under s. 27 of the Sale of Goods Act would preclude the defendant, as the owner, from denying the plaintiff's title. The defendant was not in breach of any duty of care. If there was any duty of care at all owed to the plaintiff, it was not by the defendant.

[4] The proviso to s. 27 of the Sale of Goods Act did not apply either.

(a) Champion Motors were not mercantile agents, acting in the course of business of a mercantile agent when the car was sold by Chong to the plaintiff.

(b) In the circumstances of the case, the plaintiff was not a buyer in good faith. The onus was on the plaintiff to prove that he was a buyer in good faith and without notice and this he had failed to do.

[5] The defendant had authority to seize the vehicle. He had a right of repossession as provided by Clause 2 of the hire-purchase agreement.

[Judgment for defendant.]

Cases referred to:
Cole v. North Western Bank [1875] 32 LT 733 Ex Ch 354
Mercantile Credit Co. Ltd. v. Hamblin [1964] 3 WLR 800
Heap v. Motorists' Advisory Agency Limited [1922] 1 KB 577

Legislation referred to:
Sale of Goods Act 1957, s. 27

For the plaintiff - N.A. Marjoribanks; M/s. Lovelace & Hastings
For the defendant - Jennifer N.F. Cheong; M/s. Mah-Kok & Din.

JUDGMENT

Abdul Razak J:

A hire purchase agreement was entered into between one Leung, the registered proprietor of a motor vehicle, the subject-matter of this suit, and Credit Corporation Berhad, a finance house, the defendant. The vehicle was bought by the latter from Champion Motors at RM18,169.25 which became RM11,800 after the necessary deductions were made, which the defendant duly paid. At the defendant's instance, the vehicle was registered by Champion Motors in the said Leung's name with the defendant's endorsement thereto claiming ownership. At least that was what it appeared to the defendant because when the photostat copy of the registration card was returned to it together with other documents (which for present purposes are not relevant), it bore the endorsement on the defendant's claim. But, in fact, it never had been so endorsed, because someone had forged the document to make it appear as if it had. It is not difficult to imagine who that person was as can be seen later. The vehicle was later found to be in the plaintiff's hands, from whom it was seized by the defendant. But the plaintiff claimed innocently to have bought it from one Chong who was to be at the time a salesman from Champion Motors.

A summons-in-chambers was taken out by the plaintiff to have the vehicle returned to him pending the hearing of the suit, for a declaration that he was the owner of the vehicle and for delivery of the same. It was countered by the defendant's own application to have the vehicle sold and the proceeds safely deposited till then. The defendant had also counter-claimed for a declaration that it was the legal owner and for consequential reliefs thereto. These matters came before me on 24 January when it was agreed that for the convenient disposal of all the matters that the suit itself be heard by which it was agreed that, for the purpose, the parties would rest their case entirely on the written submissions of Counsel based on the parties' affidavit and their documents in support of their applications in chambers.

It seems clear that the question of whether the plaintiff was entitled to repossess the vehicle must necessarily turn on the application of s. 27 of the Sale of Goods Act, which reads:

> Subject to the provisions of this Ordinance and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

> Provided that where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him when acting in the ordinary course of business of a mercantile agent shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

The thrust of the plaintiff's claim was that he was unaware of the hire-purchase agreement between the defendant and the said Leung. That even if the defendant was the owner, it was precluded by its conduct from denying the plaintiff's title. The plaintiff had not said, however, in what way the defendant's conduct had precluded it from claiming title. All he said was that he bought the vehicle from the said Chong after he was shown the registration card. It was free from any encumbrances and he believed him to be a mercantile agent. He duly transferred the car to himself after obtaining the transfer form from the registered owner Leung and duly signed by the latter. Counsel for the plaintiff submitted that because Champion Motors were precluded by their conduct from denying plaintiff's title, they had no title to transfer to the defendant. The said conduct was on the alleged negligence of in not transmitting to the Registrar of Motor Vehicles the defendant's letter claiming ownership of the vehicle and for their failure to keep safe the registration card. There was, however, no evidence that Champion Motors had failed to send the letter or had negligently kept the registration card. Nevertheless, Counsel said that Champion Motors were the defendant's agent and they must accept the responsibility for the former's default. The argument is, with respect, somewhat baffling to me. It appears that for the purpose of saying that the owner was precluded by his conduct from denying the buyer's title and Champion Motors had no title to pass to the defendant, Counsel said Champion Motors were the owner. But, for the purpose of saying that the defendant was liable for the act of its mercantile agent, Counsel said that Champion Motors were the defendant's agent. But Champion Motors could not be both at the same time without one cancelling the other out.

Do the facts nevertheless support the plaintiff's case that he had a good title?

It is not denied that the registered proprietor of the vehicle was Leung. He held the vehicle on hire-purchase from the defendant. But until the payments were fully paid, he could not become the owner. The car was purchased by the defendant from Champion Motors for which full payment had been made. Champion Motors then acted for the defendant to effect the hire-purchase transaction between the defendant and the said Leung. In strict terms, therefore, the defendant was the owner of the vehicle and Champion Motors and Chong their servant were the defendant's agent for the specific purpose of that transaction. Champion Motors had thus no authority or consent, either express or implied, from the defendant to effect any sale. The very existence of the hire-purchase agreement between Leung and the defendant in which Champion Motors were a party itself negatived such implied sale to the plaintiff or to any third party. If there was, if at all, an implied authority to sell, it must be clearly therefore to Leung and to no others. It followed Chong as the servant of Champion Motors could not seek to act on the supposed authority when he never had and never was intended to have - *Cole v. North Western Bank* [1857] 32 LT 733 Ex. Ch. 354. One does not see therefore how the failure of Champion Motors to ensure that the registration card was endorsed had prevented the defendant from resuming ownership. If the agent had been careless in not making the necessary endorsement, that is clearly not the concern of the defendant, but a matter between Champion Motors and the plaintiff. It could not effect to transfer the vehicle to the plaintiff without Champion Motors or their agent doing so which they could not do without the defendant's consent. No negligence thus can create a right in the agent which it did not have in the first place. As far as the defendant was concerned, it had done all that

was necessary to ensure that it retained ownership by telling Champion Motors to give effect to its instructions. If the latter had nevertheless defaulted, then plainly no blame could be attached to it. It could not have prevented the transfer to the plaintiff because it clearly had been deceived by the false endorsement from doing so. If there was a duty of care to the plaintiff, the defendant had therefore not breached that duty. In *Mercantile Credit Co. Ltd. v. Hamblin* [1964] 3 WLR 800, the Court held that although the defendant was under a duty of care to the plaintiff who bought her car through a car dealer, that under the circumstances, she was not liable because she had been led to believe by the dealer that everything was all right as far as her car was concerned which she had given as a security for a loan. The more so since the dealer was a person with whom she was well acquainted with and apparently respectable. In our case, the defendant was dealing with Champion Motors whose respectability and integrity were never questioned. Champion Motors to everyone's knowledge had been a known car dealer for a long time. As Lush J said in *Heap v. Motorists' Advisory Agency Limited* [1922] 1 KB 577, that negligence in order to give rise to a defence under the section must be more than mere carelessness but must amount to a disregard of his obligations towards the person who is setting up the defence. I think what is envisaged is such implied or express representation that Champion Motors had virtually blanket approval or general authority from the defendant to do what they thought was best. Unless there is such an intent, the agent's authority could not affect the owner's title. I do not think there was even remotely such a situation before me.

The plaintiff contended, alternatively, that Champion Motors and therefore Chong as their servant was a mercantile agent for the defendant. But before such plea could be set up, it must be proved that Champion Motors was a mercantile agent and was acting in the course of business of a mercantile agent. Secondly, the plaintiff bought the goods in good faith. And thirdly, he had no notice of Chong's lack of authority to sell. Whether he acted in good faith and without notice of the seller's lack of authority was a matter within the personal knowledge of the buyer; and as stated in *Heap's* case (above), the burden of proof was on the buyer. But were Champion Motors a mercantile agent? It is defined in s. 2 of the Sale of Goods Act as "A mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods". Champion Motors customarily acted as principal not as agent to sell cars. That is common knowledge. According to the plaintiff, the car was viewed at Chong's office at Asia Motors. The assumption is the sale to the plaintiff would have also taken place there. Plainly, therefore, the sale could not have been in the ordinary course of business of Champion Motors. Counsel for the plaintiff, however, submitted that Chong was a salesman at Champion Motors. Why was it necessary for the plaintiff therefore to lie in his affidavit that Chong was employed at Asia Motors, if not because of the plaintiff's knowledge the transaction was not in the ordinary course of business of Champion Motors, since Champion Motors could not have allowed Chong to sell the car to the plaintiff when it had already been sold to the defendant. If it was in the ordinary course of business of Champion Motors, then the latter should have been asked to say that Chong's conduct was sanctioned by them or even that the sale had taken place at their premises. That they did not do so merely meant that, if they did, they would have spoken unfavourably of the said Chong.

It was also necessary to show that the vehicle was bought by the plaintiff in good faith and without notice of Chong's defect in title before he could retain title. The plaintiff said he believed that Chong had authority because Leung's registration card did not bear the defendant's claim to title. Acting in good faith presupposes that, if the circumstances reasonably suggest that he should put himself on an enquiry, a buyer will not proceed further

without taking the necessary safeguard or making further enquiries. There are three instances in which the plaintiff's good faith had been seriously in question. Firstly, the payment of RM15,000 for the car was made in two separate cheques of RM7,500 each. That itself should have put him on an enquiry as to the *bona fide* of the transaction if not of Chong himself. Because, if the whole sum of RM15,000 was to be paid to Leung, then there need only be one cheque not two, unless part of the price was to be paid to Leung, the other to Chong as his share of the unholy bargain. It could not have been the commission to Champion Motors because then the cheque would have been asked to be drawn in favour of Champion Motors. Lush J in *Heap's* case said an open cheque should put a person on an enquiry.

Secondly, plaintiff had not stated that he had enquired from Chong or anyone else, for that matter, whether the RM15,000 was a fair price for the car. He was silent on the matter, which could mean thus that he enquired from the said Chong what the original price was and was told that it was RM18,000 or so. Or, he had enquired from other persons what the value was and was told that it was more than RM15,000. If he had been told that the value was also RM15,000 or thereabout, then he would have certainly come out to say so in evidence which would explain how he had bought a car only seven days old but RM3,000 cheaper. That seems to be a plain and irresistible inference because it is difficult to conceive that a person would embark on buying a car without enquiring first what the new price was. How could he know otherwise that he was not being overcharged, unless of course, the plaintiff himself was a salesman and dealt in cars, but who clearly was not.

Thirdly, the conduct of the plaintiff in these proceedings as pointed out earlier, leaves very much to be desired. He had affirmed that Chong was a salesman for Asia Motors when in fact he was a salesman for Champion Motors. It seems clear this was done, in order to show that the car was properly transacted by Chong since Champion Motors were never authorised to sell the car by the defendant. The circumstances were alarming enough to suggest that at best they should have alerted the plaintiff to make discreet enquiries before proceeding to purchase. At their worst, they lead one necessarily to the conclusion that the plaintiff was in collusion with Chong and Leung to defraud the defendant of its title. The plaintiff's conduct in respect of the purchase, Leung's participation in signing the transfer form when the vehicle was still on hire-purchase to him and Chong's positive step in selling it to the plaintiff knowing it to be the defendant's, in my view, amply justify that conclusion.

It was also contended by Counsel that the defendant had no authority to seize the vehicle which could only be done under the Act if the hirer had been in default of the instalments, which was not the case. It was said that the defendant should have filed instead an action for conversion or detinue for the return of the said car. But, the exercise by the defendant of its right of repossession was made under Clause 2 of the Hire-Purchase Agreement, where the owner was entitled to recover the vehicle if for any reason it had passed out of the hirer's possession. In such an event, he may without taking any other action lawfully retake it and is justified in the use of reasonable force against a person who resists him. (*Halsbury's, 3rd Edn. Vol. 38, para. 1315*).

I would in the circumstances dismiss the action with costs. I would consequently also enter judgment for the defendant on the counterclaim and costs.

This judgment is also entered for the defendant in Civil Suit No. C 124 of 1984 where the facts are the same.

Also found at [1984] 2 CLJ 238